

MAR 20 2007

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

60137-207; 136-3022-U

CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300.

on March 20, 2007Signature Laura CombsTyped or printed name Laura Combs

Application Number

10/774,339

Filed

2/6/2004

First Named Inventor

Helmetsie

Art Unit

3751

Examiner

Le, Huyen D.

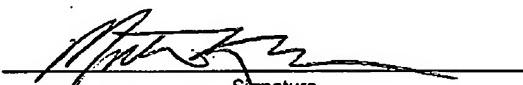
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.Registration number 53,154Matthew L. Koziarz

Typed or printed name

248 988 8360

Telephone number

 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

March 20, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAR 20 2007

60,137-207; 136-3032-U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eugene A. Helmetsie
Serial Number: 10/774,339
Filed: February 6, 2004
Group Art Unit: 3751
Examiner: Le, Huyen D
Title: Configurable Modular Shower Surround Features

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In response to the final office action mailed on December 21, 2006, Applicant respectfully submits a Pre-Appeal Brief Request for Review. This Request is filed with a Notice of Appeal. As will be explained in further detail, the review is requested based upon the errors set forth below:

1. Claims 14 and 15 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 2,036,184 to Armstrong (hereafter "Armstrong"). The rejection fails to consider the limitations of these claims.
2. Claims 19, 22, and 24 were rejected under 35 U.S.C. §102(b) as being anticipated by Armstrong. There is a lack of evidence in the reference to support the Examiner's conclusion.
3. Claims 13-15, 18, 19, and 21-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,718,131 to Kitamura, et al. (hereafter "Kitamura") in

60,137-207; 136-3032-U

view of U.S. Patent 4,886,236 to Randall (hereafter "Randall"). The rejection fails to state any motivation.

1. Rejection of Claims 14 and 15 Under 35 U.S.C. §102

The rejection lists claims 14 and 15, but the Examiner has failed to mention or consider these claims or the features of these claims in the body of the rejection. Therefore, the rejection of claims 14 and 15 under 102(b) should be withdrawn.

2. Rejection of Claims 19, 22, and 24 Under 35 U.S.C. §103

Regarding independent claim 19, the Examiner interprets Armstrong as including horizontal shelf slots that comprise at least partially arcuate openings, as claimed. The figures in Armstrong do not appear to show enough detail to support the Examiner's conclusion that the openings are at least partially arcuate, and the description does not describe the shape of the openings. Furthermore, the Examiner has not explained how he has interpreted the reference to disclose that the openings are at least partially arcuate. For these reasons, the rejection fails to establish *prima facie* anticipation and should be withdrawn.

Regarding claim 22, the Examiner interprets Armstrong as including partially arcuate openings having a uniform nominal depth extending into the corner portion, as recited in Applicant's claim. The figures in Armstrong do not appear to show enough detail to support the Examiner's interpretation, and the Examiner has not explained how he has interpreted the reference to disclose that the openings have a uniform nominal depth as recited in Applicant's claim. For these reasons, the rejection fails to establish *prima facie* anticipation and should be withdrawn.

Regarding claim 24, the Examiner argues that the upper wall portion 8, the lower wall portion 9, and the arcuate rear wall portion 1 of Armstrong comprise a single continuous piece as recited in Applicant's claim. However, Armstrong expressly describes that these elements are separate pieces (see page 2, lines 25-27). The elements 8 and 9 are separate pieces that are secured to the bracket 1 using screws. Therefore, the Examiner's interpretation of these elements as being a single continuous piece as recited in Applicant's claim is improper because the

60,137-207; 136-3032-U

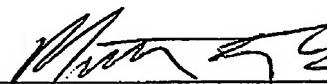
reference directly contradicts this interpretation. For this reason, the rejection should be withdrawn.

3. Rejection of Claims 13-15, 18, 19 and 21-24 Under 35 U.S.C. §103

The Examiner argues that it would have been obvious to substitute the brackets of Randall for the pins of Kitamura since one is a functional equivalent of the other and would work equally well. Applicant notes that even if the supporting means of Kitamura and Randall are functional equivalents as the Examiner argues, this does not alleviate the burden on the Examiner of providing motivation to substitute one for the other. A proper suggestion or motivation to modify a base reference requires some benefit to result from the modification, and the rejection fails to state any such motivation. Accordingly, the rejection should be withdrawn.

Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

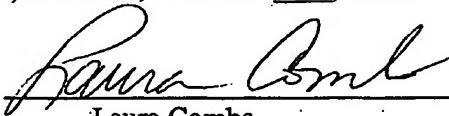


Matthew L. Koziarz, Reg. No. 53,154
Carlson, Gaskey & Olds
400 W. Maple Road, Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: March 20, 2007

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (571) 273-8300, on March 20, 2007.



Laura Combs